

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AVAIL HOLDING LLC,

Plaintiff,

-against-

FRANCES RAMOS; COMMISSIONER OF SOCIAL
SERVICES OF THE CITY OF NEW YORK SOCIAL
SERVICES DISTRICT; CREDIT ACCEPTANCE
CORPORATION; CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU;

Defendants.
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STATE OF NEW YORK)
) ss:
COUNTY OF QUEENS)

Civil Action No:
19-cv-00117 (BMC)

Affidavit of Frances Ramos
In Support of Motion for
Summary Judgment

FRANCES RAMOS, being duly sworn, deposes and says as follows:

1. I am a defendant in this action. I make this affidavit in support of my motion for summary judgment dismissing the complaint as time-barred, and on my counterclaims to quiet title and for attorneys' fees.
2. I live in the home that is the subject of this foreclosure action, located at 101-22 132nd Street, South Richmond Hill, New York 11419 (the "Subject Property"). I have lived there ever since my parents purchased the Subject Property in 1969.
3. I am the sole owner of the Subject Property.
4. This is the fourth foreclosure action that Plaintiff and its predecessors-in-interest have brought seeking to collect on the same default. The first action, *FCDB FF1 2008-1 Trust v. Frances Ramos et al.*, (the "2011 Action") was filed under Index Number 14111/2011 in the Supreme Court, Queens County, on June 13, 2011.

5. The 2011 Action was dismissed in January 2013 upon a finding that the plaintiff in that action failed to send a pre-foreclosure notice required under New York State law.
6. Another of Plaintiff's predecessors-in-interest filed a second foreclosure action, *FRT 2011-1 Trust v. Frances Ramos, et al.* (the "2013 Action"), under Index Number 705252/2013 in the Supreme Court, Queens County on November 14, 2013.
7. The 2013 Action was dismissed in January 2015 upon a finding that the plaintiff in that action again failed to comply with New York's pre-foreclosure notice requirements.
8. On December 11, 2015, Plaintiff commenced a third foreclosure action, *Avail Holding LLC v. Frances Ramos, et al.* (the "2015 Action"), in this Court under docket number 15-cv-7068 (NGG)(LB).
9. In March 2018, after my attorney served my cross-motion for summary judgment dismissing the complaint, Plaintiff agreed to voluntarily discontinue the 2015 Action.
10. I have not made a mortgage payment to Plaintiff or anyone else since before the start of the 2011 Action.
11. I am currently in possession of the Subject Property, in that I am living there and have exclusive access to it. I have been in possession of the Subject Property at all times since before the commencement of the 2011 Action. Neither Plaintiff nor its predecessors in interest have ever been in possession of the Subject Property.
12. As described more fully in the accompanying memorandum of law, declaration of Christopher Newton, and exhibits in support of this motion, this action is time-barred because it was brought more than six years after Plaintiff's predecessor-in-interest elected to accelerate the total amount due under the subject loan by commencing the 2011 Action.

13. As described more fully in the accompanying memorandum of law, declaration of Christopher Newton, and exhibits in support of this motion, since enforcement of the subject note and mortgage are time-barred, the Court should grant summary judgment on my counterclaim to quiet title under RPAPL § 1501(4) and issue an order cancelling and discharging of record the Subject Mortgage.
14. As described more fully in the accompanying memorandum of law, declaration of Christopher Newton, and exhibits in support of this motion, upon the successful defense of this action, the Court should award reasonable attorneys' fees under Real Property Law § 282.


FRANCES RAMOS

Sworn to before me this
3rd day of June, 2019.



Notary Public

CHRISTOPHER R. NEWTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 02NE6297160
Qualified In Queens County
My Commission Expires 02-18-2022